



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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Robert G. Burnley  
Director

Gerard Seeley, Jr.  
Piedmont Regional Director

### **AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO OMEGA PROTEIN, INC. Permit No. 40278**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §10.1-1309 and §10.1-1316, between the Air Pollution Control Board and Omega Protein, Inc., for the purpose of resolving certain alleged violations of environmental law and/or regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Air Pollution Control Law" means Va. Code § 10.1-1300 *et seq.*
3. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.
6. "Order" means this document, also known as a Consent Order.
7. "Omega Protein" means Omega Protein, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
8. "Facility" means the Omega Protein facility located at 610 Menhaden Road, in Reedville, Virginia.
9. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
10. "Permit" means Construct and Operate Permit, which became effective June 26, 2002 and revised July 16, 2004.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Omega Protein owns and operates a Fish Processing Plant in Reedville, Virginia. This facility is the subject of a Construct and Operate permit issued on June 26, 2002 and revised July 16, 2004.
2. On June 23, 2004 a meeting was held between the Department of Environmental Quality ("DEQ") Piedmont Regional Office staff and Omega Protein, Inc. to discuss the permit application for the installation of a new oil-fired boiler rated at 20.9 million British Thermal Units per hour (mm Btu/hr) and a new propane-fired hot water heater rated at 4.7 mm Btu/hr. During this meeting DEQ was informed that Omega Protein had begun actual construction of the new boiler and hot water heater when they submitted the permit application on January 29, 2004. Based on this information, DEQ staff has reason to believe that Omega Protein violated the Air Pollution Control Law. The following identifies the applicable law and regulations.
  - Omega Protein began actual construction of the 20.9 mm Btu/hr boiler prior to receiving a permit. This is a potential violation of 9VAC5-80-1120 A. 9VAC 5-80-1120 A states: No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source.
  - The 20.9 mm Btu/hr boiler is subject to federal New Source Performance Standards contained in 40 Code of Federal Regulations Part 60, subpart Dc,

and 9 VAC 5-50-400. 40 CFR Part 60.7 (a) and amended by 9 VAC 5-50-420, requires the following notification for a 20.9 mm Btu/hr boiler: Notification of the date construction of an affected facility is commenced postmarked no later than 30 days after such date.

3. On July 16, 2004, a modified New Source Review permit was issued authorizing the installation and operation of the new 20.9 mm Btu/hr boiler and 4.7 mm Btu/hr hot water heater.
4. On August 4, 2004, a Notice of Violation (NOV) was issued for the above alleged violations.
5. On September 14, 2004, Facility representatives met with DEQ staff to discuss the August 4, 2004 Notice of Violation.

#### **SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316(C), orders Omega Protein, and Omega Protein voluntarily agrees, to pay a civil charge of \$9,633.00 within 30 days of the effective date of the Order in settlement of the violation cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Payment shall include the Federal Tax Identification Number for the Facility.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Omega Protein, for good cause shown by Omega Protein, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves the violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Omega Protein by DEQ on August 4, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for

matters not addressed herein. Omega Protein does not waive any rights it may have to object to enforcement actions by other federal, state, or local authorities arising out of the same or similar facts alleged in this Order.

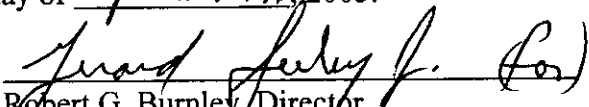
3. For purposes of this Order and subsequent actions with respect to this Order, Omega Protein admits the jurisdictional allegation, but does not admit the factual finding, and conclusions of law contained herein.
4. Omega Protein consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Omega Protein declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein, except that Omega Protein reserves its right to a hearing or other administrative proceeding authorized or required by law or to judicial review of any issue of fact or law contained in any subsequent amendments to this Order issued by the Board without the consent of Omega Protein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Omega Protein to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. Omega Protein does not waive any rights it may have to object to enforcement actions by other federal, state, or local authorities arising out the same or similar facts alleged in this Order.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Omega Protein shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Omega Protein shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Omega Protein shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Omega Protein. Notwithstanding the foregoing, Omega Protein agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 11. This Order shall terminate upon receipt by the Department of the civil charge specified in Section D.1 of this Order. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Omega Protein from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, Omega Protein voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of September 8, 2005.

  
Robert G. Burnley, Director  
Department of Environmental Quality

Omega Protein voluntarily agrees to the issuance of this Order.

By:   
Graham Lyell Jett  
General Manager

Date: Sept. 8, 2005

Commonwealth of Virginia

City/County of Northumberland

The foregoing document was signed and acknowledged before me this 8th day of  
September, 2005, by Graham Lyell Jett, who is  
(name)

General Manager of Omega Protein, Inc., on behalf of the Corporation.  
(title)

Deane F. Saunders  
Notary Public

My commission expires: July 31, 2009.